

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 04-00181 SOM
)	
Plaintiff,)	DECLARATION OF LESLIE E.
)	OSBORNE, JR.; EXHIBIT "A"
vs.)	
)	
REMY AGBAYANI,	(01))	
CYNTHIA AGBAYANI,	(02))	
)	
Defendants.)	
)	
)	
)	

DECLARATION OF LESLIE E. OSBORNE, JR.

I, LESLIE E. OSBORNE, JR., hereby state:

1. I am an Assistant U.S. Attorney for the District of Hawaii and I am responsible for representing Plaintiff United States of America in this action.

2. On December 5, 2005, Defendant Remy Agbayani entered into a Memorandum of Plea Agreement in this case in which he agreed to forfeit all right, title, and interest which he had in the following properties identified in Count 13 of the Indictment:

- (a) A sum of money equal to \$725,325.51 in United States currency, representing the amount of proceeds obtained as a result of the offenses listed in Count 1, for which defendants are jointly and severally liable;
- (b) \$378,915.25 in United States currency, being the net proceeds from the sale of the fee simple interest in the real property located at 648

Moaniala Street in Honolulu, Hawaii, titled in the name of Tyna Lynn Chang, an alias used by defendant CYNTHIA AGBAYANI, and more specifically identified as Tax Map Key No. (1)3-7-022-005, together with all improvement, appurtenances, fixtures, attachments and easements; and

- (c) \$243,050.26 in United States currency seized on September 16, 2003, and September 22, 2003, from American Savings Bank checking account (No. 80000394051) and savings account (No. 3001034918), both held in the name of Reanne N. Agbayani.

3. On January 5, 2006, Defendant Cynthia Agbayani entered into a Memorandum of Plea Agreement in this case in which she agreed to forfeit all right, title, and interest which she had in the following properties identified in Count 13 of the Indictment:

- (a) A sum of money equal to \$725,325.51 in United States currency, representing the amount of proceeds obtained as a result of the offenses listed in Count 1, for which defendants are jointly and severally liable;
- (b) \$378,915.25 in United States currency, being the net proceeds from the sale of the fee simple interest in the real property located at 648 Moaniala Street in Honolulu, Hawaii, titled in the name of Tyna Lynn Chang, an alias used by defendant CYNTHIA AGBAYANI, and more specifically identified as Tax Map Key No. (1)3-7-022-005, together with all improvement, appurtenances, fixtures, attachments and easements;
- (c) \$243,050.26 in United States currency seized on September 16, 2003, and September 22, 2003, from American Savings Bank checking account (No. 80000394051) and savings account (No. 3001034918), both held in the name of Reanne N. Agbayani; and
- (d) A sum of money equal to \$275,000.00 in United States currency, representing the amount of

proceeds obtained by defendant CYNTHIA AGBAYANI as a result of the offense listed in Count 4.

4. Based upon the Memorandums of Plea Agreement, this Court entered a Preliminary Order of Forfeiture, on June 14, 2006, which forfeited to the United States all right, title and interest of Defendants Remy Agbayani and Cynthia Agbayani in the following properties, pursuant to 18 U.S.C. §§ 982(a)(1) and 982(a)(2)(A):

- (a) A sum of money equal to \$725,325.51 in United States currency, representing the amount of proceeds obtained as a result of the offenses listed in Count 1, for which defendants are jointly and severally liable;
- (b) \$378,915.25 in United States currency, being the net proceeds from the sale of the fee simple interest in the real property located at 648 Moaniala Street in Honolulu, Hawaii, titled in the name of Tyna Lynn Chang, an alias used by defendant CYNTHIA AGBAYANI, and more specifically identified as Tax Map Key No. (1)3-7-022-005, together with all improvement, appurtenances, fixtures, attachments and easements;
- (c) \$243,050.26 in United States currency seized on September 16, 2003, and September 22, 2003, from American Savings Bank checking account (No. 80000394051) and savings account (No. 3001034918), both held in the name of Reanne N. Agbayani; and
- (d) A sum of money equal to \$275,000.00 in United States currency, representing the amount of proceeds obtained by defendant CYNTHIA AGBAYANI as a result of the offense listed in Count 4.

(hereinafter collectively referred to as the "Subject Properties").

5. Pursuant to 21 U.S.C. § 853(n), as incorporated

by 18 U.S.C. § 982(b)(1), third parties asserting a legal interest in the forfeited properties are entitled to a judicial determination of the validity of any legal claims or interest they assert.

6. The Preliminary Order of Forfeiture directed the United States Marshals Service to publish notice of the Preliminary Order of Forfeiture, in accordance with 21 U.S.C. § 853(n), as incorporated by 18 U.S.C. § 982(b)(1), to inform all third parties of the right to petition the Court within thirty (30) days for a hearing to adjudicate the validity of their alleged legal interest in the Subject Properties.

7. On or about June 16, 2006, written notice of the Preliminary Order of Forfeiture was served upon Wells Fargo Bank, via certified mail, return receipt requested; the return receipt indicated that the notice was received on June 20, 2006.

8. On or about June 16, 2006, written notice was served upon EMC Mortgage, via certified mail, return receipt requested; the return receipt indicated that the notice was received on June 19, 2006.

9. On July 14, 21 and 28, 2006, the United States Marshals Service published notice of the Preliminary Order of Forfeiture in the Honolulu Star-Bulletin. A true and correct copy of the Affidavit of Publication is attached hereto as Exhibit "A" and incorporated herein by reference.

10. Pursuant to 21 U.S.C. § 853(n)(2), as incorporated by 18 U.S.C. § 982(b)(1), any interested third person must petition the Court, within thirty days of receipt of notice or the final publication of notice, whichever is earlier, to adjudicate the validity of his or her alleged interest in the Subject Properties. The last day for filing a petition in this case was August 28, 2006.

11. As of the date of this declaration, no petitions or claims have been received or filed.

12. As set out above, the interests of Defendants Remy Agbayani and Cynthia Agbayani in the Subject Properties have already been forfeited pursuant to this Court's Preliminary Order of Forfeiture, and no third-party petitions have been received or filed. Accordingly, the Final Order of Forfeiture, which is being lodged contemporaneously with this motion, should be entered.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th date of September, at Honolulu, Hawaii.

/s/ Leslie E. Osborne, Jr.

LESLIE E. OSBORNE, JR.